

House Bill 1167

By: Representative Lucas of the 139<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

To amend Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to state sales and use taxation, so as to provide for a temporary increase in the rate of state sales and use taxation; to provide for legislative intent regarding the proceeds of such increase; to provide for conforming amendments; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to state sales and use taxation, is amended in Code Section 48-8-3, relating to exemptions from taxation, by revising subparagraph (B) of paragraph (33.1) as follows:

"(B) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall be exempt from the first 1.80 percent of the ~~4 percent~~ percentage of state sales and use tax imposed by this chapter and shall be subject to the remaining ~~2.20 percent~~ percentage of the 4 percent state sales and use tax imposed by this chapter."

**SECTION 2.**

Said article is further amended in Code Section 48-8-3.1, relating to exemptions for and taxation of motor fuels, by revising subsections (a) and (b) as follows:

"(a) Except as provided in subsection (b) of this Code section, sales of motor fuels as defined in paragraph (9) of Code Section 48-9-2 shall be exempt from the first 3 percent of the sales and use taxes levied or imposed by this article and shall be subject to the remaining ~~1 percent~~ percentage of the sales and use taxes levied or imposed by this article.

(b) Sales of motor fuel other than gasoline which motor fuel other than gasoline is purchased for purposes other than propelling motor vehicles on public highways as defined in Article 1 of Chapter 9 of this title shall be fully subject to the ~~4 percent~~ sales and use

25 taxes levied or imposed by this article unless otherwise specifically exempted by this  
26 article."

27 **SECTION 3.**

28 Said article is further amended by revising Code Section 48-8-30, relating to imposition, rate,  
29 and collection of taxes, as follows:

30 "48-8-30.

31 (a) There is levied and imposed a tax on the retail purchase, retail sale, rental, storage, use,  
32 or consumption of tangible personal property and on the services described in this article.

33 The rate of the state sales and use taxation provided for in this article shall be:

34 (1) Four percent, except as otherwise provided in paragraph (2) of this subsection; and

35 (2) Five percent for the time period specified in this paragraph. This time period for the  
36 5 percent rate of taxation shall begin on July 1, 2010, and shall end at the last moment of  
37 June 30, 2013. It is the intent of the General Assembly that the amount of proceeds  
38 collected under this paragraph which exceed the amount collected at the rate of 4 percent  
39 shall, subject to appropriation, be used solely to fund education and educational purposes  
40 in this state.

41 (b)(1) Every purchaser of tangible personal property at retail in this state shall be liable  
42 for a tax on the purchase at the ~~rate of 4 percent~~ percentage of the sales price of the  
43 purchase specified in subsection (a) of this Code section. The tax shall be paid by the  
44 purchaser to the retailer making the sale, as provided in this article. The retailer shall  
45 remit the tax to the commissioner as provided in this article and, when received by the  
46 commissioner, the tax shall be a credit against the tax imposed on the retailer. Every  
47 person making a sale or sales of tangible personal property at retail in this state shall be  
48 a retailer and a dealer and shall be liable for a tax on the sale at the ~~rate of 4 percent~~  
49 percentage of the gross sale or gross sales specified in subsection (a) of this Code section,  
50 or the amount of taxes collected by him from his purchaser or purchasers, whichever is  
51 greater.

52 (2) No retail sale shall be taxable to the retailer or dealer which is not taxable to the  
53 purchaser at retail.

54 (c)(1) Upon the first instance of use, consumption, distribution, or storage within this  
55 state of tangible personal property purchased at retail outside this state, the owner or user  
56 of the property shall be a dealer and shall be liable for a tax at the ~~rate of 4 percent~~  
57 percentage of the cost price specified in subsection (a) of this Code section, except as  
58 provided in paragraph (2) of this subsection.

59 (2) Upon the first instance of use, consumption, distribution, or storage within this state  
60 of tangible personal property purchased at retail outside this state and used outside this

state for more than six months prior to its first use within this state, the owner or user of the property shall be a dealer and shall be liable for a tax at the ~~rate of 4 percent~~ percentage of the cost price or fair market value of the property specified in subsection (a) of this Code section, whichever is the lesser.

(3) This subsection shall not be construed to require a duplication in the payment of the tax. The tax imposed by this subsection shall be subject to the credit otherwise granted by this article for like taxes previously paid in another state.

(c.1)(1) Every purchaser of tangible personal property at retail outside this state from a dealer, as defined in subparagraph (H) of paragraph (3) of Code Section 48-8-2, when such property is to be used, consumed, distributed, or stored within this state, shall be liable for a tax on the purchase at the ~~rate of 4 percent~~ percentage of the sales price of the purchase specified in subsection (a) of this Code section. It shall be prima-facie evidence that such property is to be used, consumed, distributed, or stored within this state if that property is delivered in this state to the purchaser or agent thereof. The tax shall be paid by the purchaser to the retailer making the sale, as provided in this article. The retailer shall remit the tax to the commissioner as provided in this article and, when received by the commissioner, the tax shall be a credit against the tax imposed on the retailer. Every person who is a dealer, as defined in subparagraph (H) of paragraph (3) of Code Section 48-8-2 and who makes any sale of tangible personal property at retail outside this state which property is to be delivered in this state to a purchaser or purchaser's agent shall be a retailer and a dealer for purposes of this article and shall be liable for a tax on the sale at the ~~rate of 4 percent~~ percentage of such gross sales specified in subsection (a) of this Code section or the amount of tax as collected by that person from purchasers having their purchases delivered in this state, whichever is greater.

(2) No retail sale shall be taxable to the retailer or dealer which is not taxable to the purchaser at retail. The tax imposed by this subsection shall be subject to the credit otherwise granted by this article for like taxes previously paid in another state. This subsection shall not be construed to require a duplication in the payment of the tax.

(d)(1) Every person to whom tangible personal property in the state is leased or rented shall be liable for a tax on the lease or rental at the ~~rate of 4 percent~~ percentage of the gross lease or rental charge specified in subsection (a) of this Code section. The tax shall be paid to the person who leases or rents the property by the person to whom the property is leased or rented. A person who leases or rents property to others as a dealer under this article shall remit the tax to the commissioner as provided in this article. When received by the commissioner, the tax shall be a credit against the tax imposed on the person who leases or rents the property to others. Every person who leases or rents tangible personal property in this state to others shall be a dealer and shall be liable for a tax on the lease

or rental at the ~~rate of 4 percent~~ percentage of the gross lease or rental proceeds specified in subsection (a) of this Code section, or the amount of taxes collected by him from persons to whom he leases or rents tangible personal property, whichever is greater.

(2) No lease or rental shall be taxable to the person who leases or rents tangible property to another which is not taxable to the person to whom the property is leased or rented.

(3) The lessee of both taxable and exempt property in this state under a single lease agreement containing a lease period of ten years or more shall have the option to discharge in full all sales and use taxes imposed by this article relating to the tangible personal property by paying in a lump sum ~~4 percent~~ the percentage of the fair market value of the tangible personal property specified in subsection (a) of this Code section at the date of inception of the lease agreement in the same manner and under the same conditions applicable to sales of the tangible personal property.

(e) Upon the first instance of use within this state of tangible personal property leased or rented outside this state, the person to whom the property is leased or rented shall be a dealer and shall be liable for a tax at the ~~rate of 4 percent~~ percentage of the rental charge paid to the person who leased or rented the property specified in subsection (a) of this Code section, subject to the credit authorized for like taxes previously paid in another state.

(e.1)(1) Every person who leases, as lessor, or rents tangible personal property outside this state for use within this state shall be liable for a tax at the ~~rate of 4 percent~~ percentage of the rental charge paid for that lease or rental specified in subsection (a) of this Code section if that person is a dealer, as defined in subparagraph (H) of paragraph (3) of Code Section 48-8-2 and title to that property remains in that person. It shall be prima-facie evidence that such property is to be used within this state if that property is delivered in this state to the lessee or renter of such property, or to the agent of either. The tax shall be paid by the lessee or renter and payment of the tax shall be made to the lessor or person receiving rental payments for that property, which person shall be the dealer for purposes of this article. The dealer shall remit the tax to the commissioner as provided in this article and, when received by the commissioner, the tax shall be a credit against the tax imposed on the dealer. Every person who is a dealer, as defined in subparagraph (H) of paragraph (3) of Code Section 48-8-2 and who leases or rents tangible personal property outside this state to be delivered in this state to the lessee, renter, or agent of either shall be a dealer and shall be liable as such for a tax on the lease or rental at the ~~rate of 4 percent~~ percentage of the gross proceeds from such leases or rentals specified in subsection (a) of this Code section or the amount of taxes collected by that dealer for leases or rentals of tangible personal property delivered in this state, whichever is greater.

(2) No lease or rental shall be taxable to the dealer which is not taxable to the lessee or renter. The tax imposed by this subsection shall be subject to the credit granted by this article for like taxes previously paid in another state. This subsection shall not be construed to require a duplication in the payment of the tax.

(f)(1) Every person purchasing or receiving any service within this state, the purchase of which is a retail sale, shall be liable for tax on the purchase at the ~~rate of 4 percent~~ percentage of the gross charge or charges made for the purchase specified in subsection (a) of this Code section. The tax shall be paid by the person purchasing or receiving the service to the person furnishing the service. The person furnishing the service, as a dealer under this article, shall remit the tax to the commissioner as provided in this article; and, when received by the commissioner, the tax shall be a credit against the tax imposed on the person furnishing the service. Every person furnishing a service, the purchase of which is a retail sale, shall be a dealer and shall be liable for a tax on the sale at the ~~rate of 4 percent~~ percentage of the gross charge or charges made for furnishing the service specified in subsection (a) of this Code section, or the amount of taxes collected by him from the person to whom the service is furnished, whichever is greater.

(2) No sale of services shall be taxable to the person furnishing the service which is not taxable to the purchaser of the service.

(g) Whenever a purchaser of tangible personal property under subsection (b) or (c.1) of this Code section, a lessee or renter of the property under subsection (d) or (e.1) of this Code section, or a purchaser of taxable services under subsection (f) of this Code section does not pay the tax imposed upon him or her to the retailer, lessor, or dealer who is involved in the taxable transaction, the purchaser, lessee, or renter shall be a dealer himself or herself and the commissioner, whenever he or she has reason to believe that a purchaser or lessee has not so paid the tax, may assess and collect the tax directly against and from the purchaser, lessee, or renter, unless the purchaser, lessee, or renter shows that the retailer, lessor, or dealer who is involved in the transaction has nevertheless remitted to the commissioner the tax imposed on the transaction. If payment is received directly from the purchaser, it shall not be collected a second time from the retailer, lessor, or dealer who is involved.

(h) The tax imposed by this Code section shall be collected from the dealer and paid at the time and in the manner provided in this article. Any person engaging or continuing in business as a retailer and wholesaler or jobber shall pay the tax imposed on the gross proceeds of retail sales of the business at the rate specified when proper books are kept showing separately the gross proceeds of sales for each business. If the records are not kept separately, the tax shall be paid as a retailer or dealer on the gross sales of the business. For the purpose of this Code section, all sales through any one vending machine

shall be treated as a single sale. The gross proceeds for reporting vending sales shall be treated as if the tax is included in the sale and the taxable proceeds shall be net of the tax included in the sale.

(i) The tax levied by this Code section is in addition to all other taxes, whether levied in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes levied.

(j) In the event any distributor licensed under Chapter 9 of this title purchases any motor fuel on which the prepaid state tax or prepaid local tax or both have been imposed pursuant to this Code section and resells the same to a governmental entity that is totally or partially exempt from such tax under paragraph (1) of Code Section 48-8-3, such distributor shall be entitled to either a credit or refund. The amount of the credit or refund shall be the prepaid state tax or prepaid local tax or both rates for which such governmental entity is exempt multiplied by the gallons of motor fuel purchased for its exclusive use. To be eligible for the credit or refund, the distributor shall reduce the amount such distributor charges for the fuel sold to such governmental entity by an amount equal to the tax from which such governmental entity is exempt. Should a distributor have a liability under this Code section, the distributor may elect to take a credit for those sales against such liability.

(k) The prepaid local tax shall be imposed at the time tax is imposed under subparagraph (b)(2)(B) of Code Section 48-9-14."

#### SECTION 4.

Said article is further amended by revising Code Section 48-8-32, relating to collection of tax from dealers, as follows:

"48-8-32.

The tax ~~at the rate of 4 percent of the retail sales price at the time of sale or 4 percent of the cost price at the time of purchase, as the case may be,~~ shall be collectable at the rate specified in subsection (a) of Code Section 48-8-30 from all persons engaged as dealers in the sale at retail, or in the use, consumption, distribution, or storage for use or consumption in this state of tangible personal property."

#### SECTION 5.

Said article is further amended by revising Code Section 48-8-43, relating to disposition of excess collections, as follows:

"48-8-43.

When the tax collected for any period is in excess of ~~4 percent~~ the rate specified in subsection (a) of Code Section 48-8-30, the total tax collected shall be paid over to the commissioner less the compensation to be allowed the dealer."

**SECTION 6.**

Said article is further amended in Code Section 48-8-63, relating to taxation of nonresident subcontractors, by revising subsection (e) as follows:

"(e)(1) Any subcontractor who enters into a construction contract with a general or prime contractor shall be liable under this article as a general or prime contractor. Any general or prime contractor who enters into any construction contract or contracts with any nonresident subcontractor, where the total amount of such contract or contracts between such general or prime contractor and any nonresident subcontractors on any given project equals or exceeds \$250,000.00 shall withhold ~~up to 4 percent~~ a percentage of the payments due the nonresident subcontractor in satisfaction of any sales or use taxes owed this state. The percentage withheld shall be at the rate specified in subsection (a) of Code Section 48-8-30.

(2) The prime or general contractor shall withhold payments on all contracts that meet the criteria specified in paragraph (1) of this subsection until the nonresident subcontractor furnishes such prime or general contractor with a certificate issued by the commissioner showing that all sales taxes accruing by reason of the contract between the nonresident subcontractor and the general or prime contractor have been paid and satisfied. If the prime or general contractor for any reason fails to withhold ~~up to 4 percent~~ the percentage of the payments due the nonresident subcontractor under their contract, such prime or general contractor shall become liable for any sales or use taxes due or owed this state by the nonresident subcontractor."

**SECTION 7.**

All laws and parts of laws in conflict with this Act are repealed.